

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FELIX ERNESTO SOSA,

Defendant-Appellant.

UNPUBLISHED

August 15, 1997

No. 169934

Genesee Circuit Court

LC No. 90-043068-FH

Before: Smolenski, P.J., and Kelly and Gribbs, JJ.

PER CURIAM.

Defendant pled guilty to conspiracy to deliver over 650 grams of cocaine, MCL 750.157a; MSA 28.354(1), MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i). Under the terms of a plea bargain agreement, the prosecutor agreed to dismiss a charge of delivery of over 650 grams of cocaine, and a supplemental information charging defendant as a repeat controlled substance offender, MCL 333.7413(2); MSA 14.15(7413)(2). Defendant was sentenced to life imprisonment without the possibility of parole. We affirm defendant's conviction and sentence and remand for further proceedings.

Defendant argues on appeal that the trial court erred in ruling that defendant waived his right to an entrapment hearing. At defendant's sentencing hearing, during allocution, defendant said through his interpreter that he was innocent and had been entrapped. Some time later, defendant filed a motion to remand to the trial court to request an entrapment hearing. This Court granted defendant's motion and remanded the case to the trial court. After a hearing, the trial court denied defendant's motion. A claim of entrapment is not waived by a guilty plea. *People v White*, 411 Mich 366; 308 NW2d 128 (1981). However, a claim of entrapment *is* waived if not raised prior to sentencing. *People v Crall*, 444 Mich 463; 510 NW2d 182 (1993). Here, defendant argues that defendant did not speak English and that he raised the defense as best he could. We agree that defendant preserved the issue and remand for an entrapment hearing.

Defendant also argues that he is entitled to resentencing because the mandatory sentence of life imprisonment without the possibility of parole does not apply to conspiracy and is cruel and unusual.

There is no merit to this issue. See *People v Lopez*, 442 Mich 889; 498 NW2d 251 (1993); *People v Poole*, 218 Mich App 702, 716; 555 NW2d 485 (1996).

Finally, defendant contends that the trial court abused its discretion in refusing to allow him to withdraw his plea. We disagree. At the guilty plea hearing, Defendant acknowledged that he had no complaints about his counsel and that there was nothing counsel had said or done that he did not understand. Defendant recited a detailed factual basis for the plea, including the information that he and his coconspirator split the money they received from the drug sale. At sentencing, defense counsel informed the trial court that defendant wished to withdraw his plea because he was innocent and was denied the effective assistance of counsel. Although defendant submitted an affidavit on appeal, it was not made a part of the record below and cannot be considered. MCR 7.20(A)(1). On the record before us, the trial court did not abuse its discretion in finding that defendant had not established a fair and just reason to withdraw his plea. *People v Jackson*, 203 Mich App 607, 611-612; 513 NW2d 206 (1994).

Affirmed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Roman S. Gribbs